



ADCAS Project Commercial Guide May 2009

Prepared on behalf of

ADCAS

by

HALEYS

HALEYS 

The Haleys logo graphic consists of a stylized 'H' shape. The left vertical bar is blue, the right vertical bar is green, and a yellow swoosh curves across the top of the 'H'.

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Pre-Contract/Tender Stage

Always review the tender enquiry - **understand what you are pricing**. Do you have all the documents that you are deemed to have priced for?

Review and understand the specification and drawings where provided and check any quantities provided by others.

Establish responsibility for design, including the co-ordination – **is it your responsibility?**

Review and understand the terms and conditions of the proposed contract/order. It's too late to argue once the contract has been signed. Any onerous terms should either be priced or excluded from the contract.

Understand the payment terms - what do you have to do to get paid and **when will you get your money?**

When are the works required on site and is there a programme? How much time do you need before you commence manufacture.

When a contract/order is issued check it to ensure the scope of works, price and terms are the same as those included at tender stage.

If you are unsure seek advice before you submit the tender or sign the contract.

Construction Phase

Don't commence work on the project until you are satisfied that you will be paid for doing the work. This includes any drawing and manufacturing prior to site installation.

Ideally insist on the contract/order being signed prior to commencing any works. If a letter of intent is issued make sure that it incorporates the agreed terms of the proposed contract/order and matches your tender.

Once the contract/order is in place ensure that works are commenced in compliance with it.



Make sure you agree a programme of works and if possible it gets incorporated into the order. This will help you to plan the installation of your works and the co-ordination of the installation with other interfacing trades.

Following commencement of the works ensure that you progress in accordance with the terms of the contract and the agreed programme if you have one.

Always notify the contractor if you are unable to progress the works in accordance with the contract. The contract may contain specific requirements for the issue of notices and the failure to comply may prevent recovery of time and costs and may leave you liable for damages.

Keep records of activities on site including the progress of other trades. Photographs and site diaries can provide valuable evidence in the event of a dispute.

Comply with all written instructions issued in accordance with the contract. Compliance with verbal instructions could be at your risk and you should therefore check what the contract allows.

Understand and comply with the terms relating to variations. Some contracts will require you to tell the Employer/Contractor when **you** think the works have been varied and provide them with costs. Failure to do so can result in a loss of entitlement even if you do the work.

Other contracts may require you to agree the cost of any variation prior to the work being undertaken. Failure to comply with such requirements may again prevent you from being paid.

Ensure that applications for payment and/or invoices are issued in accordance with the contract. Failure to comply may entitle the Employer/Contractor to withhold payment.

Notify the Employer/Contractor when you consider that all the works are complete. Remember that completion may not be limited to the actual installation but may also be dependent upon issuing documents such as Operation and Maintenance Manuals and As-Built Drawings.



Post Contract

Agree in writing the extent of any outstanding works or snagging items at completion and also agree when they will be completed.

Prepare the final account and submit it in accordance with the contract. Some contracts specify a time by which the final account is to be submitted, failure to comply may **limit the amount of the final payment**.

Apply for the release of retention once the works are complete. Contracts usually provide for any retention to be released in 2 stages: half on completion; half at the end of the defects period.

Ensure that any defects are made good during the defects period, usually 12 months after completion of the project **NOT** necessarily completion of your works.

Apply for the final release of retention at the end of the defects period. The second portion is always the hardest to collect and this can be held up by outstanding defects.

Typical Problem Areas

Typical Work Undertaken

The contracts typically undertaken in the Ductwork and Ventilation Industry typically result in a number of issues that can, and do, impact on the commercial performance of contracts.

Many of the problems are attributable to the fast-track nature of the contracts undertaken. Understandably, time pressures and demands require a proactive, focussed approach to the delivery of the contract works. Unfortunately such demands can lead to issues that impact on the commercial performance of a contract.

These issues include the following scenarios:



The Need to Act on Verbal Instructions

Projects are sometimes '*shouted-in*' with site problems addressed and decisions reached on the basis of discussions, or arguments, between the site teams.

Whilst such an approach can be effective in ensuring that programme commitments are met, the decisions reached usually have cost and, potentially, time problems. The ability to recover one or both of those elements can be seriously reduced by:

- i. A failure to recognise that the instructed change constitutes a change to your contract obligations;
- ii. The absence of a written record of the instruction;
- iii. The subsequent refusal of the contractor to make additional payments or agree time entitlements;
- iv. An absence of adequate records detailing the impact of the verbal instruction; and
- v. The failure to submit, where appropriate, records to the contractor for signature.

Another issue that can often impact is linked to the actual source of an instruction. Whilst generally instructions are issued through the contractor, in some instances the originator of the instruction will be further up the contractual chain, i.e. Main Contractor or the Employer.

In practice difficulties often occur where the originator is in fact the contractor. Such instructions, often termed "*domestic instructions*", can be contentious as the contractor will generally have nowhere else (other than other sub-contractors) to pass off any cost or time problems. As a result contractors will look to use every available avenue to avoid paying. Verbal instructions unsupported by written confirmation or detailed records will inevitably be used as a means of avoiding responsibility.

Absence of Detailed Design Information

A further typical characteristic is that in some instances the design information provided at tender stage is comprised, in part, of standard or generic details.



As a result of this, it is not uncommon for the design development to evolve as the contract progresses. Although this approach may not automatically give rights to additional payment or time, some entitlements may arise if decisions to finalise a design change are not reached in a time that allows the agreed programme to be met.

Co-ordination Clashes

The fast-track nature of many of the contracts means that, on occasions, changes are required as a consequence of clashes between the proposed positions for ductwork and other services. Clearly such clashes and the resultant changes that may be required to the ductwork are likely to result in additional or abortive work, which may in turn lead to extra costs being incurred and/or programme implications.

In some cases a co-ordination clash may result from the knock-on effect of a change required by the contractor. It is important to bear in mind that where a clash is not a consequence of an instructed change you **may** have legitimate entitlements in respect of the impact of the clash provided you do **not** have a contractual responsibility for co-ordination.

Contra Charge Accounts

One of the frustrations for Ductwork sub-contractors generally is the tendency for contractors to issue, usually towards the end of a contract, a contra-charge account detailing sums which they intend to deduct from the Ductwork sub-contractor. The content of such contra-charges vary but can encompass costs in relation to:

- i. Clearing sub-contractor's debris
- ii. Provision of task lighting
- iii. Provision of craneage
- iv. Provision of storage
- v. Contractor attendance at weekends or evenings
- vi. Other sub-contractors costs



Whether the contra-charge is legitimate or not, its existence frequently results in a reduction of monies payable and the best form of defence is good records.

Commercial Impacts/Problem Areas

All of the above problem areas potentially impact on the commercial performance of contracts. The basic facts are:

Costs Rise Disproportionately To Sales.

The issues identified can have all or some of the following impacts:

- i. Additional labour costs;
- ii. Additional material costs;
- iii. Acceleration costs (overtime working, additional supervision time, additional plant);
- iv. Loss of productivity;
- v. Additional drawing time;
- vi. Abortive works;
- vii. additional management costs

Solutions

The issues raised above can have a significant impact on the outturn performance of a contract and although it will not always be possible to deal effectively with **all** issues on a project, steps can be taken to ensure that such issues do not impact on the '**bottom line**'.

The Pre-Contract and Construction Phase notes above outline the types of steps that can and should be implemented to minimise risk and maximise potential return

Whilst we will never operate in a perfect environment it is clear that through good record keeping and making sure that we understand the rules, the commercial performance of contracts and ultimately the company can be further improved.

HALEYS

Birmingham London Milton Keynes Nottingham Purley

Specialist Engineering Support Services

Our Profile

Haleys, is a leading Mechanical & Electrical Commercial & Legal Consultant.

The Company was established as a partnership in 1989 and became Limited in 1996. We operate in the specialist engineering market at all levels.



The Company Headquarters are in Surrey, and the other offices are located in London and the Midlands. All office locations have been strategically located to meet our Clients' needs and from them we can cover the UK.

Our People



Our team has a wide variety of experience and background in Specialist M&E and Engineering Services.

Your Commercial Control

Our primary objective is always to assist our clients in the successful profitable completion of projects.

Our experience enables our clients to feel confident that their project administration and commercial management are being professionally and comprehensively dealt with.

Our Services

Commercial Management Services

- Procurement
- Vetting terms & conditions
- Preparation of applications for payments
- Sub-contract account administration
- Monthly cost value reporting
- Valuation of Variations
- Agreement of Final Accounts

Contractual Services

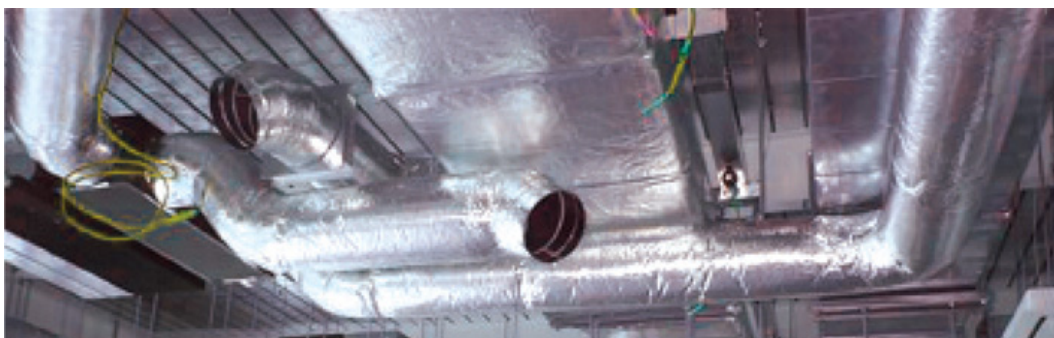
- Claim preparation
- Claims defence
- Management of disputes
- Contract reviews and risk analysis
- Planning

Dispute Resolution

- Adjudication
- Arbitration
- Litigation Support
- Expert Reports

Estimating and Cost Planning

- Cost Checking
- Cost Plan Preparation
- Services measurement and bill preparation
- Tender pricing



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